



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



PLEASE NOTE: Effective September 1, 2003, the street address is 29 Hazen Drive.

October 3, 2003

Mr. Scott Heimlich
d/b/a Landscapes, Inc.
223 Farrarville Road
Belmont, NH 03220

**NOTICE OF DECISION
ADMINISTRATIVE FINE
No. AF 03-004
(SUBSURFACE SYSTEMS BUREAU)**

Dear Mr. Heimlich:

As you are aware, by Notice of Proposed Administrative Fine No. AF 03-004 issued March 26, 2002, the Water Division sought an administrative fine of \$1,000 against you for alleged violations of Env-Ws 1014.11, relating to failing to cover an approved septic system following final inspection on property located at 32 Howard Road, Gilmanton, NH ("the Property"). Pursuant to RSA 485-A:43, V, and based on my review of the evidence presented at the hearing held on this matter on September 15, 2003, I have concluded that a fine of \$1,000 is appropriate as set forth below:

- ▶ A fine in the amount of \$1,000 is imposed against you for failing to cover an approved septic system following final inspection.

The \$1,000 fine shall be paid within 30 days of the date of the decision.

Fine payments shall be by check or money order payable to "Treasurer-State of NH" and sent to the attention of the Legal Unit, DES/Office of the Commissioner, PO Box 95, Concord, NH 03302-0095.

The purpose of RSA 485-A, the state water pollution and waste disposal statute, is to ensure that New Hampshire's surface and ground water supplies are protected from pollution and potential health hazards. Thus, under Env-Ws 1014.11, DES requires that an approved subsurface sewage disposal system ("the septic system") be covered with backfill following final inspection. This prevents pathogens from escaping from the septic system and contaminating the environment. You violated the rule by failing to cover the approved septic system at the Property following final inspection.

This decision is based on the following findings and conclusions:

1. Stephen and Donna Mann own property located at 32 Howard Road, Gilmanton, NH, and the site of the alleged violation ("the Property").
2. On June 24, 2002, DES issued Construction Approval No. CA 2002044181A to Mr. Mann for a septic system to be located at the Property.
3. In the spring of 2002, Mr. Mann contracted with Scott Heimlich d/b/a Landscapes, Inc., to install the septic system on the Property.
4. Mr. Heimlich is a licensed septic system installer.

5. Mr. Heimlich installed the septic system and on October 1, 2002, DES issued a final operational approval for the system.
6. On November 18, 2002, Mr. Mann informed DES that Mr. Heimlich had not covered the system following final inspection.
7. Env-Ws 1014.11 provides, in part, that: "(a) Before placing earth backfill over the system, the stone shall be covered with untreated building paper, a 2 inch layer of hay, or filter fabric. An impervious covering such as tar paper shall not be used, as this interferes with ventilation."
8. Scott Heimlich violated Env-Ws 1014.11 by failing to cover an approved septic system following final inspection.
9. For a violation of Env-Ws 1014.11, Env-C 604.02(j) authorizes a \$1,000 fine.
10. Under Env-C 601.09(c), the imposed fine must be reduced by 10 percent if the Respondent proves certain mitigating factors by a preponderance of the evidence.
11. None of the factors identified in Env-C 601.06(c)(1) through (4) apply to reduce the amount of fine that can be imposed for the violation noted in #8 above, because the burden of proof for these factors is on Mr. Heimlich and he did not attend or present evidence at the hearing.

You violated Env-Ws 1014.11 by failing to cover an approved septic system following final inspection. Thus, for the reasons discussed above, I have concluded that the \$1,000 fine imposed is appropriate.

As you know, the hearing on this matter was scheduled for September 15, 2003. The hearing was held as scheduled, however, you were not present, nor was anyone else present on your behalf. Moreover, because you did not inform the presiding officer of the absence prior to the hearing, the hearing was held pursuant to Env-C 204.09, subject to a motion to reconvene. Subsequently, you failed to file a motion to reconvene the hearing.

Even though you did not attend the hearing, I believe it is proper for this decision to issue. I want to remind you, however, that you and any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with NH RSA 541 and Env-C 206 (copy enclosed).

Very truly yours,

Michael P. Nolin
Michael P. Nolin
Commissioner

COPY

Michael P. Nolin, DES H. Comm.

Enclosure

cc: Town of Gilmanton Board of Selectmen
L. Dugal, Town of Gilmanton Health Officer
Harry T. Stewart, P.E., Director, DES Water Division
Richard de Séve, DES Subsurface Bureau
Mark Harbaugh, DES Compliance Attorney
Susan Weiss Alexant, DES Hearings and Rules Attorney

PART Env-C 206 MOTIONS FOR RECONSIDERATION

Env-C 206.01 Purpose. The rules in this part are intended to supplement any statutory provisions, such as RSA 541, which require or allow a person to request reconsideration of a decision of the department prior to appealing the decision. These rules do not create the right to request reconsideration of a decision where it does not otherwise exist under law.

Source. #6960, eff 3-25-99

Env-C 206.02 Applicability. The rules in this part shall apply whenever any person has a right under applicable law to request a reconsideration of a decision prior to filing an appeal of the decision with the applicable court or council having appellate jurisdiction.

Source. #6960, eff 3-25-99

Env-C 206.03 Time for Filing. As specified in RSA 541:3, any motion for reconsideration shall be filed no later than 30 days after the date the decision that is the subject of the motion was issued.

Source. #6960, eff 3-25-99

Env-C 206.04 Filing.

(a) Any person wishing to request reconsideration of a decision of the commissioner shall file the original and 2 copies of a motion for reconsideration at the following address:

Office of the Commissioner, Enforcement Unit

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(b) Any person wishing to request reconsideration of a decision of a division relating to a matter for which the commissioner has delegated the decision-making authority to the division shall file the original and 2 copies of a motion for reconsideration with the director of the division at the following address:

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(c) For purposes of this section, a "decision of the commissioner" means a decision that is signed by the commissioner, or by the assistant commissioner on behalf of the commissioner, either alone or in conjunction with a division director, such as an administrative order.

(d) For purposes of this section, a "decision of a division" means a decision that is signed by a division director or other authorized division staff, but not signed by the commissioner or by the assistant commissioner on behalf of the commissioner, such as a decision to issue or deny a permit.

Source. #6960, eff 3-25-99

Env-C 206.05 Format and Content of Motion. The person filing a motion for reconsideration shall provide the following information:

(a) The exact legal name of each person moving for reconsideration and the residence address or principal place of business of the person;

(b) A clear and concise statement of the reason(s) why the person believes the decision to be in error;

(c) A concise and explicit statement of the facts upon which the department is expected to rely in granting relief;

(d) A clear and concise statement of the specific relief or ruling requested;

(e) A copy of the decision which is the subject of the motion; and

(f) Such other information as the party filing the motion deems pertinent and relevant, including sworn written testimony and other evidence that was not available for the hearing.

Source. #6960, eff 3-25-99